No. 6043.

IN THE

United States
Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

In the Matter of the Application of
WONG BING PON,
For a Writ of Habeas Corpus.

Wong Bing Pon,
Appellant.

vs.

Walter E. Carr, District Director of District 31, United States Immigration Service, at Los Angeles,
Appellee.

BRIEF ON BEHALF OF APPELLANT.

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STATEMENT OF THE CASE.

This is an appeal from the order and judgment of the United States District Court in and for the Southern District of California, Central Division, dismissing a writ of habeas corpus and remanding the petitioner (appellant herein) to the custody of the immigration officers for deportation in accordance with the warrant of the Secretary of Labor, [Transcript of Record, pages 20-21].

The appellant was born in China and is of the Chinese race. His father, Wong Lip Que, is a citizen of the United States by birth and the appellant claims citizenship by virtue of the provisions of Section 1993 of the Revised Statutes of the United States. The citizenship of the father is conceded. [Transcript of Record, pages 3 and 15.]

The appellant was born March 6, 1914. He arrived at the port of San Pedro, California, June 16, 1929. He was given a hearing before a board of special inquiry on June 24th and was excluded by said board on the ground that the relationship was not satisfactorily established. He took an appeal to the Secretary of Labor and his appeal was dismissed August 20, 1929, on the ground that the "claimed relationship has not been reasonably established."

Grounds for Exclusion by the Board of Special Inquiry.

The appellant was excluded by the Board of Special Inquiry—

> "As an alien applicant ineligible to citizenship and not exempted under provisions of paragraph 13(c) of the Act of 1924, he not having established his claimed relationship; as an applicant under sixteen years of age and not accompanied by one or more parents; not in possession of an unexpired immigration visa; and likely to become a public charge." (Exhibit "A," Testimony, page 17.)

Only one of the grounds mentioned above is applicable in the case of a person applying for admission as the son of a citizen of the United States, that is, the relationship, and the other grounds need not be discussed. The Board of Special Inquiry based its decision that the claimed rela-

tionship had not been established on a number of alleged discrepancies in the testimony and that the appellant appeared to be younger than the age claimed for him.

Grounds for Dismissal of Appeal by the Board of Review.

From the excluding decision of the Board of Special Inquiry, an appeal was taken to the Secretary of Labor, who, on August 20, 1929, affirmed the excluding decision on the ground that the claimed relationship was not reasonably established, the decision being based on two alleged discrepancies in the testimony and that the appellant appeared to be younger than the age claimed for him. (Exhibit "A," Decision of Board of Review and Order of the Secretary of Labor, August 20, 1929.)

The Board of Special Inquiry at the port of San Pedro, California, pointed out a number of alleged discrepancies in the testimony, but the Board of Review stated that some of the said discrepancies are of slight significance, but "two discrepancies, however, are of such a nature that they are inconsistent with the applicant's claim." Therefore, it seems unnecessary to discuss the other insignificant discrepancies pointed out by the Board of Special Inquiry. The two alleged discrepancies referred to by the Board of Review are as follows:

(1) That the applicant testified he saw his father in China about two years ago, whereas the father returned from his last visit to China on January 9, 1929.

(2) That the applicant is unable to give the names of his paternal grandparents.

QUESTIONS AT ISSUE.

It is therefore, obvious that the questions at issue in this case are as follows:

Are the alleged discrepancies in the testimony before the Board of Special Inquiry of such a nature that they constitute substantial evidence to support the exclusion of the appellant?

Has there been any substantial and proper evidence before the Immigration Authorities to show that the appellant is not of the age claimed?

ARGUMENT.

I. Alleged Discrepancies in the Testimony.

(1) The first alleged discrepancy is a trivial matter. The appellant was asked only one question concerning this matter:

> Q. When did he (appellant's father) come back from China?
>
> A. He came back here about two years ago. (Exhibit "A," Testimony, page 7.)

He was not asked to explain what he meant by "about two years ago." It is well known to every experienced Chinese inspector that when a Chinese person refers to a number of years, he invariably counts by the number of calendar years. For an example, a Chinese person born on the last day of the year would be considered, according to the Chinese method of counting, two years old on the first day of the following year, whereas, according to the American method, he would be two days old. The same method of reckoning is used in the case of a person's death or any other event. The appellant's father arrived in this

country on January 9, 1929, which would, according to the Chinese calendar, be the 11th month, 17th year of the Chinese Republic. The appellant's testimony was taken on June 25, 1929, which, according to the Chinese calendar (Chinese-American calendar, published by the Department of Labor in 1928), was the 5th month, 18th year of the Chinese Republic. Thus, according to the Chinese method of reckoning such matters, it was two years since appellant's father was in China, that is, CR 17 and CR 18. The appellant's testimony was correct according to the Chinese method of reckoning and there is no discrepancy in the testimony concerning this matter.

(2) The Board of Review next mentions that the appellant was unable to give the names of his paternal grandparents. The matter is insignificant. The appellant (Exhibit "A," Testimony, page 8), was asked a triple question: "What is your father's father's *name, age* and *present whereabouts?*" He was asked the same kind of a question concerning his father's mother and in both instances he replied: "I don't know." Now, it is not clear whether he did not know his paternal grandparents' names, or their ages, or their present whereabouts or whether he did not know any one of the three. The above constituted all of the testimony given by the appellant on that point. The appellant's father was asked two questions similar to the ones asked the appellant and he gave his parents' names and stated they "died a long time ago," but he failed to give their ages. If the father, who is a mature person, could keep only two of the three points of the question in his mind, it is probable that the appellant could keep only one of the three points in his mind and his answer to the questions may have been to the last point, that he did not

know the present whereabouts of his paternal grandparents. The Board of Special Inquiry failed to ascertain whether the appellant's paternal grandparents died before his birth or after his birth, nor did it take the trouble to find out where these ancestors had died and were buried and whether or not the appellant has ever had the opportunity of seeing his paternal grandparents, their graves or their ancestral tablets, either in his home or in the ancestral hall. Both of them may have died in this country (as they were in this country at the time the appellant's father was born), and they may have been buried in this country. They do not appear to have been buried in the same cemetery in China where the appellant's mother is buried as both the appellant and his brother, when asked what ancestors were buried in a certain cemetery, mentioned only their mother, (Exhibit "A," Testimony, pages 6 and 13). If the appellant has never seen the names of his paternal grandparents, either written on a grave mark or on an ancestral tablet, he is not expected to know their names because it is sacrilegious in China to address one's paternal grandparents by their proper names. Besides, there is nothing whatever in the record to show that the appellant was ever informed of his paternal grandparents' names. The immigration officials overlooked the fact that the appellant's father was born in this country and that he departed on his first trip to China July 3, 1903 [Transcript of Record, page 16], when he was about twenty-two years of age, and that very few, if any, American-born Chinese follow the old Chinese custom of ancestor worship, and hence the children of such American-born Chinese do not follow such custom and it is not uncommon for such children not to know the names of their paternal grandparents

who died many years before they were born. It will be seen from the foregoing that this matter has no significance whatever.

II. Age of the Appellant.

In view of the insignificant character of the alleged discrepancies in the testimony, there seems to be no doubt but what the excluding decision in this case was based upon the fact that the immigration officers believed that the appellant was younger than the age claimed for him and, therefore, could not be a son of the man he claims to be, as the alleged father returned to this country about June, 1915, and, therefore, the appellant must be at least thirteen years of age to be the son of that man.

The only basis for the conclusion that the appellant was younger than the age claimed for him is (a) the opinion of the chairman of the Board of Special Inquiry that the appellant appeared to be "a child between the ages of eight and ten years," (Exhibit "A," Testimony, page 15), and (b) the certificate of two public health surgeons, who furnished a certificate containing no information as to the manner in which they reached their conclusions, that—"in our opinion the above alien is nine years of age." (Exhibit "A," Testimony, page 16.) There is no other evidence whatever of any kind or description to show that the appellant is younger than the age claimed for him. The foregoing is, in fact, no evidence at all within the correct meaning of that term, and in any event it is not the kind of "evidence" that should be used in determining the question of American citizenship even by an executive department.

(a) In the first place, it is not shown that the chairman of the Board of Special Inquiry was qualified to give an opinion of a person's age from a mere casual observation of his demeanor and physical appearance. Even if he were qualified, it was not proper for the immigration officials to base an excluding decision upon his opinion. It was not proper for him to act in the capacity of prosecutor, judge, jury and witness. It was his duty to decide the case fairly and conscientiously upon the weight of the evidence presented for his consideration and his personal opinions should not have entered into the matter beyond forming an opinion as to whether or not the witnesses, from their demeanor and manner of testifying, were telling the truth or otherwise. In the case of *Leong Kim Wai v. Burnett,* (C. C. A. 9th), 23 Fed. (2) 789, the court said:

> "In the course of his opinion, and also during the trial, the judge of the court below stated that his personal knowledge and recollection of conditions existing in the vicinity of certain streets in Honolulu some thirty years ago differed widely from the conditions as testified to by one of the witnesses for the appellant. As a matter of course, a judge can not make his individual knowledge of facts without his judicial knowledge the basis of his decision or judgment. 'Judicial knowledge, however, is limited to what a judge may properly know in his judicial capacity, and he is not authorized to make his individual knowledge of a fact not generally or professionally known the basis of his action.' 23 C. J. 61. 'Of private and special facts, in trials in equity and at law, the court or jury, as the case may be, is bound carefully to exclude the influence of all previous knowledge.' Brown v. Piper, 91 U. S. 27-42 (23 L. Ed. 200). 'The personal knowledge of the chancellor is not judicial knowledge of the court, *for there is no way of testing the accuracy of knowledge which rests*

entirely within the breast of the court.'" Weatherton v. Taylor, 124 Ark. 579, 187 S. W. 450.

In the case of *ex parte Tozier,* 2 Fed. (2) 268 (Affirmed C. C. A. First Circuit, 3 Fed. (2) 849), the court said:

> "It can not be too often repeated that administrative tribunals which exercise such tremendous powers over the liberty of persons, without the safeguards which experience had shown are necessary in court proceedings, and which are at once policeman, prosecutor, judge, and jury, are bound to a scrupulous regard for the rights of persons affected by their action."

In the case of *Iorio v. Day* (C. C. A. 2nd), 34 Fed. (2) 920, the court said:

> "The record discloses a very lax regard for the fundamentals of a fair hearing. Much is tolerated in such proceedings, and that toleration has apparently borne its fruits. We will not say that we can put our finger on this or that to reverse, but the attitude of the examiner, the introduction of confused and voluminous evidence taken elsewhere, the strong indications that the appellant was vaguely regarded as undesirable, and, that deportation was thought the easiest way to get rid of him and to avoid the normal processes of law—all these warn us of the dangers inherent in a system where prosecutor and judge are one and the ordinary rules which protect the accused are in abeyance. It is apparent how easy is the descent by short cuts to the disposition of cases without clear legal grounds or evidence which rationally proves them. These are the essence of any hearing in which the personal feelings of the tribunals are not to be substituted for prescribed standards."

The chairman of the Board of Special Inquiry in the instant case was the prosecutor, judge, jury and witness, and there is not one line of testimony to show that he was qualified as an expert witness to give an opinion as to a

person's age from his physical appearance. Furthermore, the appellant had no opportunity to offer any evidence in rebuttal of the chairman's testimony. The chairman's testimony concerning the appellant's age was absolutely worthless, it had no probative value whatever and it was grossly unfair to use it as a basis for the exclusion of the appellant.

(b) The statement of the two public health surgeons (Exhibit "A," Testimony, page 16), is just as worthless as evidence and of no more probative value than the testimony of the chairman. All that their certificate contains concerning the physical or mental examination of the appellant is contained in one brief sentence, as follows: "In our opinion the above alien is nine years of age." There is no statement whatever as to what examination they made of the appellant or on what basis, either scientific or otherwise, their opinion was formed. So far as this record shows there may have been no examination whatever beyond the fact that the appellant appeared before them and they casually looked him over and came to the conclusion that he was nine years of age. The said certificate does not even show that they made any examination of the appellant, physical, mental or otherwise. The said certificate was worthless as evidence and it was grossly unfair to use it as a basis for the exclusion of this appellant.

That a medical certificate of the kind introduced and considered by the immigration officials as to the appellant's age, is invalid and worthless as evidence was shared by the Court of Appeals of the Second Circuit in the case of *U. S. ex rel. Haft v. Tod,* 300 Fed. 918. The court said:

> "No facts whatever are stated upon which this answer is based. No reasons whatever are assigned,

> from or by virtue of which the physician arrived at the conclusion that the case of relator's phychosis could not have arisen subsequent to landing.
>
> Of course, we do not review the merit of expert opinion; but the relator is entitled to an examination upon which such an opinion can be based, and, while we do not suggest either the extent or the limits of such an examination, it is plain, *inter alia,* that there must be some previous history upon which to predicate the conclusion that the alien, at the time of entry, was a member of one or more of the classes excluded by law. The certificate of the physician does not, in any manner, disclose the condition of the alien at the time of entry nor any facts upon which his opinion as an expert is based."

Such statements are not evidence and it was grossly unfair for the immigration officials to consider them in passing on appellant's right to admission as a citizen of the United States.

On the other hand the father and prior landed brother of the appellant have consistently mentioned the appellant, giving his name and birthdate or age approximately the same as is claimed in the present proceeding. The hearing before the Board of Special Inquiry (Exhibit "A") shows that the father of the appellant made three trips to China, departing on his second trip in 1913, and returning to this country in May, 1915. This is the essential trip for the pending case. At the time of the father's return to San Francisco in May, 1915, he mentioned the birth of this child, who was then less than two years of age. He again mentioned the appellant when he applied for a citizen's return certificate, Form 430, shortly before he departed for China on his third trip in August, 1923, and also on his return from that trip in January, 1929. He also mentioned him at the time the appellant's brother, Wong Bing

Fuey, applied for admission at San Francisco in June, 1921, and the appellant was also mentioned at that time by the said brother. The father and the said brother, Wong Bing Fuey, both testified to the relationship in the present proceeding before the Board of Special Inquiry, giving the appellant's birthdate as CR 3-2-10 (March 6, 1914). It will thus be seen that the appellant's father and his said brother have consistently mentioned the appellant every time they have been before the immigration officials since the appellant was less than two years of age, giving approximately the same age or birthdate as is given in the present proceeding. (Exhibit "A," Testimony, pages 2 and 6.)

The appellant was not given an opportunity before the Board of Special Inquiry to present any evidence in rebuttal of the opinion of the public health surgeons, but after the excluding decision was rendered, there was presented on his behalf certificates of three physicians who made a careful physical and mental examination of the appellant. Said certificates will be found in the record, Exhibit "A." Doctor E. H. Anthony, who was, at the time of the hearing before the Board of Special Inquiry, and is still officially connected with the United States Marshal's office in Los Angeles, California, as United States Jail Surgeon, made a physical examination of the appellant for the purpose of expressing an opinion as to his probable age. His report and finding will be found with the records, Exhibit "A." He stated that he "conscientiously believes this boy (appellant) to be considerably older than he appears to be and while it is impossible to state his exact age it is my opinion that he is over fifteen years old and less than eighteen." He explained that the

appellant's small stature and arrested development of the genital organs were due to under nourishment and the age of the appellant's father when he was conceived. He further explained how he arrived at the appellant's approximate age, basing his opinion on scientific principles that the appellant has a complete set of permanent teeth to the second molar and that these second molars do not appear until the twelfth to the fifteenth year of the owner. Doctor C. E. Emery, a practicing physician and surgeon of Hollywood, California, was also asked to give the appellant a physical examination. His report and finding will be found in Exhibit "A" and confirms Doctor Anthony's statements. Doctor G. Lew Chee, a practicing physician of wide experience among the Chinese people and a person of the Chinese race and descent himself, was requested to give his observation on the prevalence of late age of puberty among the Chinese and he stated that such cases are not unusual at all. His certificate will also be found in Exhibit "A." Doctor Chee also stated that among the persons of the same race and even members of the same family, development of the genital organs varies according to the individual. The appellant is not quite fifteen and one-half years old, according to American reckoning. Judging him from the standard of a normal boy of the white race, the fact that he has not yet arrived at the period of puberty does not necessarily mean that he can not be of the age claimed. The appellant's father is a very short and small man and that accounts for the small stature of the appellant. The appellant has a set of permanent teeth to the second molar in perfect condition. According to Doctor Cunningham's Text on Anatomy, 5 Edition, page 1117, eruption of the second molars does not take place

until the person reaches the age of twelve years or upward, and according to Doctor Harrison's Dental Anatomy Lectures, 1928 Edition, complete calcification of the second molars does not occur until a person reaches his seventeenth year. Thus the appellant's claimed age is not only supported by the testimony of his father and brother, dating back to 1915, when the appellant was less than two years of age, but it is supported by the certificates of three physicians who state fully and specifically the grounds upon which their opinions are based.

There is not here a question of the court weighing the evidence or passing judgment on conflicting evidence. It is emphatically asserted on behalf of the appellant that there is *no evidence* to show that he is less than the age claimed for him. All that appears in this record is the brief statement of the surgeons that they are of the "opinion the above alien is nine years of age," without a particle of evidence to show that they were qualified to give any such opinion or the basis upon which they reached said conclusion or whether or not they actually made a physical and mental examination of the appellant. And the statement of the chairman of the board that "The general appearance, attitude and demeanor of the applicant (appellant) is that of a child between the ages of eight and ten years," (Exhibit "A" Testimony, page 15), but there is not a line of evidence to show that he was qualified to give an opinion concerning the appellant's age. His opinion is based entirely upon the appearance and demeanor of the appellant while testifying, but as a matter of fact, a ten year old boy might make a better appearance and testify more intelligently than a man of twenty-five years,

and hence such observation is of no value whatever in determining the age of the witness.

Generally, when public health surgeons make a physical examination of a person for the purpose of expressing an opinion as to his probable age, they set forth fully in their certificate the basis for their conclusions. In the case of *Lew Git Cheung v. Nagle* (C. C. A. 9th), 36 Fed. (2) 452, the public health surgeon set forth in his certificate that "after a consideration of the physical characteristics represented by the applicant, and a correlation of those features which aid in the estimation of age, such as hair, caputal, axillary, facial and pubic, the condition of the skin, the eruption and development of the teeth, the development of the sexual organs, the facial expression and the general attitude," he was of the opinion that the appellant was within three years either way of twenty-seven years, but even with a specific statement of this kind, the court stated:

> "It may be that resort to such evidence is susceptible to grave abuses, and for that reason is not to be encouraged, but we must consider the cases as they arise. Perhaps we should add that we doubt the wisdom of following the practice here pursued of bringing in such opinions in the forms of certificates, where there is no opportunity afforded for cross-examination, the result of which might have great value in determining whether or not the opinions should be accorded *any* weight."

A majority of the court in said case sustained the exclusion of the applicant, but there was *substantial* evidence that the applicant was of a different age than that claimed by him. The evidence offered by both sides was of a substantial character and conflicting and under the circum-

stances the court was of the opinion that "the administrative officers can not be said to have acted arbitrarily or unreasonably in the conclusion they reached." In the instant case there is no such certificate as was furnished in the case of Lew Git Cheung, *supra,* and, there was no competent evidence whatever. In this connection it is not improper to call attention to the dissenting opinion of Circuit Judge Rudkin in said case (Lew Git Cheung), as follows:

> "In Woo Hoo v. White, cited in the majority opinion, this court said that, upon the question of age, the opinion of a surgeon is believed to be of no greater value than that of a layman, and, in either case, is of little probative value to show a difference in age of only two years. In that case, as in this, the applicant claimed to be of the age of about twenty years, and the difference between the claimed age and the apparent age was from two to four years. Subsequent cases, I think, demonstrate the correctness of the views there expressed, and I do not feel that a person who has attained the age of majority, or nearly so, and has satisfactorily established his citizenship in other respects, should be denied rights appertaining to citizenship simply because some person or persons express an opinion that he looks a little older or a little younger than he claims to be. We are daily brought into contact with people whose ages belie their appearance to as great an extent as in the case before us, and, if our own rights were involved, we would not be willing to hazard a penny on our judgment."

The testimony in this case clearly establishes the claimed relationship. The appellant, his father and prior landed brother were questioned at great length concerning many details. The appellant's father was first called for examination. He was questioned (1) as to when and where he was born, his various trips to China, his marriages, and other matters pertaining to his own personal history; (2) as to the names, ages, and present whereabouts of his

parents, his parents-in-law, his paternal as well as his maternal grandparents, his children, his children's children and practically every conceivable matter pertaining to his family history; (3) as to the number of houses and rows of houses in his family village in China, the names, ages and present whereabouts of his neighbors in that village, the fish pond, the village well, the village watch tower, the village school house and the school teacher, the nearest market to that village, the construction of the ancestral hall and similar information regarding the condition in the Chinese village where the appellant was born and lived; (4) as to when the appellant was seriously ill the last time, when he started to attend school, when his stepmother first arrived at the village, and in fact practically all the principal events in the life of the appellant; and (5) as to the kind of feet the appellant's natural mother had, and the kind of feet his stepmother has, the amount and kind of money the father sent home each year to support the appellant and the other members of his family, (6) who was entitled to catch fish in the village fish pond, (7) the size and color of the grave mark over appellant's deceased mother, and many other such collateral matters too voluminous to mention here. The appellant was carefully taken over the grounds covered by the statements of his father and prior landed brother. These three persons all testified in substantially complete agreement on all matters bearing directly, or indirectly, on the issue of relationship.

It is not a one sided matter where the question of citizenship is at issue as it is in the pending case. The courts have repeatedly held that there must be some substantial evidence to support an excluding decision in such a case. In the case of *Go Lun v. Nagle,* 22 Fed. (2) 246, the court said:

> "An American citizen can not be excluded, or denied the right of entry, because of immaterial and unimportant discrepancies in testimony covering a multitude of subjects. The purpose of the hearing is to inquire into the citizenship of the applicant, not to develop discrepancies which may support an order of exclusion, regardless of the question of citizenship."

The court then stated that the evidence bearing upon the question of relationship was sufficient to establish that fact, and stated: "A contrary conclusion is arbitrary and capricious and without any support in the testimony." It will be noted that in the said case there were quite a number of alleged discrepancies pointed out by the Board of Special Inquiry, but they were not matters which had any direct bearing upon the question of relationship.

In the case of *Nagle v. Wong Ngook Hong et al.,* (decided January 26, 1928), the District Court for the Northern District of California, said: "There is no material evidence in either case upon which the immigration authorities could rely to show that the claimed relationship was not established." This decision was affirmed by the Circuit Court of Appeals for the 9th Circuit, (27 Fed. (2) 650), the court, among other things stating:

> "No group of witnesses, however intelligent, honest, and disinterested could submit to the interrogation to which these witnesses were subjected without developing some discrepancies."

It is the province of the court "to determine whether there was any substantial evidence which would support their (immigration officials') decision." *Johnson v. Leung Fook Yung,* 16 Fed. (2) 65.

"In the first place there is no evidence in the record sufficient to establish the existence of this ground" to exclude a temporary visitor.

Ex parte Himi Yasuda, 22 Fed. (2) 864.

In the case of Johnson v. Ng Ling Fong, 17 Fed. (2) 11, the Circuit Court of Appeals said:

> "There was no substantial evidence on which to base the exclusion order."

In the case of *Leong Ding v. Brough* (C. C. A.) 22 Fed. (2) 926, where an applicant was excluded because of alleged discrepancies not bearing directly upon the question of relationship, the court said:

> "But here the evidence does not warrant a reasonable mind holding that the appellant was other than he represented. The result below does not satisfy the requirement of a fair hearing. There is no substantial evidence to support the conclusion below. * * * There was no substantial evidence of contradiction on any material point, which would justify rejecting the testimony which amply supports the claim of the appellant that he was the son of Leong Ding."

In the case of *Gung You v. Nagle,* 34 Fed. (2) 848, the court stated that in proceedings by one born in China to secure admission into the United States as a son of a citizen, rejection of testimony of alleged father, brothers and uncles of applicant, supported by records of the Department of Labor as to relationship and denial of applicant's claim for admission, was arbitrary and unauthorized.

In the case of *Chin Hing v. U. S.,* 24 Fed. (2) 523, the court said:

> "The same fairness and impartiality should govern in considering and weighing the testimony of persons of Chinese descent who claim to be citizens of this

country as are given to the testimony of any other class of witnesses."

In the case of *Kwock Jan Fat v. White,* 253 U. S. 454, 40 S. Ct. 566, the court said:

> "The acts of Congress give great power to the Secretary of Labor over Chinese immigrants and persons of Chinese descent. It is a power to be administered, not arbitrarily and secretly, but fairly and openly, under the restraints of the tradition and principles of free government applicable where the fundamental rights of men are involved, regardless of their origin or race. It is the province of the courts, in proceedings for review, within the limits amply defined in the cases cited, to prevent abuse of this extraordinary power, and this is possible only when a full record is preserved of the essentials on which the executive officers proceed to judgment. * * * It is better that many Chinese immigrants should be improperly admitted than that one natural born citizen of the United States should be permanently excluded from his country."

CONCLUSION.

We submit that the appellant has been denied a full and fair hearing, in that the alleged discrepancies in the testimony were only of the most frivolous and insignificant character and cannot be deemed to be substantial or material evidence to support the order of the appellant's exclusion. The questions employed to develop these so-called discrepant statements are unfair. The real purpose of the proceeding before the Board of Special Inquiry was utterly disregarded. There is absolutely not a single reason to reject the overwhelming amount of evidence in substantiation of the claimed relationship. The mere incredulity of the Board of Special Inquiry cannot be made a ground for the appellant's exile.

We also submit that the appellant has been denied the full and fair hearing to which he was and is entitled by law, in that there is no evidence to indicate that he is less than the age claimed for him. The multitude of substantial proofs presented to confirm the age claimed by the appellant cannot be arbitrarily ignored. The rights and privileges of citizenship are altogether too precious to be placed at the mercy of the hasty, haphazard opinion of any individual.

We respectfully submit that the order and judgment of the District Court should be reversed and that the appellant should be discharged from the custody of the Immigration Authorities.

Dated at Los Angeles, California, March 31, 1930.

Respectfully submitted,

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